

REMARKS

Claims 4, 6-9, 14, 17, and 18 stand rejected in the Office Action. Claims 11-13 contain allowable subject matter but are objected to as depending from a rejected claim. Claims 8 and 13 are cancelled in this response. Upon entry of the amendments, claims 4, 6, 7, 9, 11, 12, 14, 17 and 18 remain pending.

Applicants have canceled claims 8 and 13 because, on further analysis, Applicants discovered that they depended from claims that had been canceled previously.

With the current claim amendments, Applicants offer three sets of claims. Them first is claims 4, 7 and 8 drawn to a cigarette containing a burnable material made of Ginkgo biloba leaves. The second set of claims includes claims 9, 11 and 12 drawn to a cigar containing a burnable material made of Ginkgo biloba leaves. The third set of claims is claims 14, 17 and 18, drawn to a method for quitting smoking by smoking a cigarette Ginkgo biloba leaves that burn during smoking. Applicants urge that the pending claims are patentable over the cited art for the reasons discussed below.

Preliminary Observations – Allowable Subject Matter

The Examiner states that claims 11-13 contain allowable subject matter. Applicants have cancelled claim 13. Accordingly the following comments refer to claims 11 and 12.

The subject matter of claims 11 and 12 is both novel and non-obvious in view of the cited art. Claim 11 recites a cigar having a burnable material made of 100% by weight Ginkgo biloba leaves. The burnable material burns during smoking. Claim 12 recites a cigar having a burnable material that comprises 50-100% by weight Ginkgo biloba leaves.

The cited JP ‘261 reference does not disclose the limitation that the burnable material burns during smoking of the cigar. Rather, the reference discloses a “filter part” containing dried and crushed leaves of, among other plants, ginkgo. In the reference, the filter part is clearly distinguished from the burnable portion of the cigarette. Specifically, the reference says that the “fag main body” is the combustion part, and that a filter is attached to one end of the fag main body. Clearly, based on the disclosure of the reference, the Gingko biloba leaves do not burn during smoking. Claims 11 and 12 further distinguish from the JP ‘261

reference because the reference does not disclose cigarettes containing 100% by weight Gingko biloba leaves in the burnable portion or a cigarette containing 50-100% by weight Gingko biloba leaves.

The cited Chinese patent CN '036 likewise does not disclose a cigar having Gingko biloba leaves in a burnable portion. Rather the CN '036 reference describes a cigarette in which a liquid extract of Gingko leaves is sprayed onto the tobacco. As such, the CN '036 reference does not disclose a cigar with a burnable portion made of Gingko biloba leaves.

The subject matter of claims 11 and 12 is also non-obvious in light of the cited art. Claims may be rejected for obviousness over the reference only if the invention as a whole would have been obvious to one of skill in the art in view of the teaching of the reference. In the case of JP '261 patent, the invention as a whole would not have been obvious in light of the references disclosure of a cigarette containing Gingko leaves in a filter. The purpose of using a filter in a cigarette as disclosed in the JP '261 reference is to remove toxic or unpleasant materials from the burning tobacco. On the other hand, the invention as a whole embraces a cigar having a burnable portion made in whole or in part of Gingko biloba leaves. As the Gingko biloba leaves burn during smoking (see Specification at page 4, lines 7-11), components of the Gingko biloba leaves volatilize and are inhaled by the smoker (see Specification at page 9, lines 4-10). In light of the disclosure of the JP '261 reference, it would not have been obvious to provide a cigar containing a burnable material with Gingko biloba leaves, whereby flavolides and other volatile components are inhaled during smoking.

In a similar manner, the disclosure of the CN '036 reference would not make the invention as recited in claims 11 and 12 obvious to one of skill in the art. The CN '036 reference is drawn to a process for spraying a liquid extract of Gingko biloba onto the tobacco leaves. As such it is teaching away from using the dried leaves of Gingko biloba themselves.

For at least the reasons discussed above, the subject matter of claims 11 and 12 is patentable over the cited references.

Patentability of Claims 6, 7, 17 and 18 In View of Allowability of Claims 11 and 12

Allowable claims 11 and 12 are drawn to cigars containing a burnable portion having 50-100% by weight Gingko biloba leaves. As discussed above, claims 6 and 7 on the one

hand, and claims 17 and 18 on the other are analogous or parallel to allowable claims 11 and 12. Specifically claims 6 and 7 are drawn to a cigarette having the same limitations as the cigar of allowable claims 11 and 12. Similarly, claims 17 and 18 are drawn to a method of quitting smoking comprising the step of smoking a cigarette containing up to 100% Gingko biloba leaves in the burnable portion.

Applicants respectfully submit that claims 6 and 7 on the one hand, and claims 17 and 18 on the other are patentable over the cited references for the same reasons as discussed above with respect to allowable claims 11 and 12. For this reason, Applicants respectfully request that the rejection of claims 6, 7, 17, and 18 be withdrawn.

In light of the discussion above, Applicants further respectfully urge that independent claims 4, 9 and 14 are patentable over the cited references. Claims 4, 9, and 14 are drawn to a cigarette, a cigar, and a method for quitting smoking, respectively. The key limitation in the claims is that the cigarette or cigar contains a burnable portion made of Gingko biloba leaves. Applicants respectfully submit that the references, as discussed above, do not anticipate or make obvious a cigarette or cigar containing Gingko biloba leaves in the burnable portion, or a method for quitting smoking comprising smoking such a cigarette. For the reasons, Applicants respectfully request that the rejection of claims 4, 9 and 14 be withdrawn.

Rejection of Claims 4, 6-8, 14 and 17-18 Over JP '261

Claims 4, 6-8, 14 and 17-18 stand rejected under 35 U.S.C. § 103 as unpatentable over JP 8266261-Derwent Abstract (JP '261). Applicants have cancelled claim 8. As to the other claims, Applicants respectfully traverse the rejection and request reconsideration.

Rejection under § 103 is proper if the invention as a whole would have been obvious in light of the disclosure of the reference. The invention as a whole includes the limitations recited in the claims, as well as properties and advantages of the invention that are described in the specification. The proper inquiry is not whether the disclosure of the reference can be modified in such a way as to right of the subject matter of claims, but whether the invention as a whole would have been obvious in light of that disclosure.

As discussed above, the JP '261 reference does not disclose a key limitation of the rejected claims. That limitation is that the burnable material, containing Gingko biloba leaves,

burns during smoking of the cigarette or cigar. Support for the limitation in the claims is found in the specification at page 4, lines 7-11 and at page 9, lines 4-10.

The JP '261 reference discloses a cigarette having a material derived from Gingko in the filter of the cigarette. As discussed above, the reference make clear that the filter of the cigarette is separate from the burnable portion. Thus the cigarette disclosed in the reference is completely different from that of the subject rejected claims.

In view of the objects of the invention and the invention as a whole, Applicants respectfully submit it would not have been obvious to modify the disclosure of the JP '261 reference to arrive at the subject matter of the claims. One object of the present invention is to produce a cigarette containing Gingko biloba leaves to provide a cigarette substitute that functions as an ordinary cigarette, while having health benefits for the smoker. To accomplish this object, the Gingko biloba leaves must be present in the burnable portion of the cigarette, so that healthful compounds can volatilize during smoking and be inhaled into the lungs of the smoker. *See Specification at page 9, lines 4-10.* In the reference however, Gingko material is present only in a filter. The dried and crushed Gingko material contained in the filter of the JP '261 reference only act to filter the tobacco and decrease the foul smell of the burning tobacco. Significantly, the Gingko material in the filter of the reference cannot and does not burn during smoking. The current claims, on the other hand, call for Gingko leaves to be present in the burnable portion so that organic compounds may be volatilized and inhaled by the smoker. For these reasons, Applicants respectfully submit that the invention as a whole would not have been obvious over the disclosure of the JP '261 reference. Accordingly, Applicants respectfully request the rejections under § 103 in view of the JP '261 reference be withdrawn.

Rejection of Claims 4, 9 and 14 Over the CN '036 Reference

Claims 4, 9 and 14 stand rejected under 35 U.S.C. § 103 as unpatentable over Chinese Patent Abstract CN 1140036 (CN '036). Applicants respectfully traverse the rejection and request reconsideration.

The CN '036 reference fails to disclose a key limitation of the rejected claims, that limitation being a cigarette or cigar having Gingko leaves present as a component of the burnable portion, wherein the Gingko leaves burn during smoking. The reference discloses spraying a solution on tobacco together with spices. The solution may be prepared by extracting

Gingko biloba leaves with water or ethanol. The burnable portion of the cigarette of the reference contains no Gingko biloba leaves that burn during smoking.

Applicants respectfully submit that it would not have been obvious to one of skill in the art to modify the disclosure of the CN '036 reference to arrive at the subject matter of claims 4, 9, and 14. In the reference, Gingko biloba leaves do not burn during smoking. The CN '036 reference specifically teaches away from using Gingko biloba leaves by teaching that an extract of those leaves is sprayed onto tobacco. Spraying the liquid onto the tobacco does not reduce the nicotine content or the tobacco content of the cigarette. In view of those teachings, it would not have been obvious to provide cigarettes and cigars containing Gingko biloba leaves that burn during smoking, and a method for quitting smoking by smoking such cigarettes. Accordingly, Applicants respectfully request that the rejection be withdrawn.

CONCLUSIONS

For the reasons discussed above, Applicants believe that pending claims 4, 6, 7, 9, 11, 12, 14, 17 and 18 are allowable and respectfully request an notice of allowance. The Examiner is invited to telephone the undersigned if that would be helpful to resolving any issue.

Respectfully submitted,

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